MAR Judiciary

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ADMINISTRATIVE OFFICE OF THE COURTS

COURTS OF APPEAL BUILDING
ANNAPOLIS, MARYLAND 21401
269-2141

STATE COURT ADMINISTRATOR
WILLIAM H. ADKINS, II

DEPUTY STATE COURT ADMINISTRATOR
ROBERT W. McKEEVER

MEMORANDUM TO: The Judges of the Court of Appeals
The Judges of the Court of Special Appeals
The Judges of the Circuit Courts for the Counties and
The Supreme Bench of Baltimore City
The Judges of the District Court
The Judges of the Orphans' Courts
Circuit and Local Administrators
Chief Clerk of the District Court
Clerk, Court of Appeals
Clerk, Court of Special Appeals
Clerks of the Circuit Courts for the Counties and of
The Supreme Bench of Baltimore City
Registers of Wills
Deputy State Court Administrator
Unit Directors, AOC
Assistant Directors, AOC
Administrators, Juvenile Court and Supreme Bench
Assistant Administrators, Juvenile Court and Supreme Bench
Reporter, Standing Committee on Rules
Secretary, Board of Law Examiners
Bar Counsel, Attorney Grievance Commission
Central Professional Staff, Court of Special Appeals
State Librarian

FROM: William H. Adkins, II WHA II

DATE: May 18, 1979

SUBJECT: Maryland Public Ethics Law : Judicial Branch

SB 1120, enacted by the 1979 General Assembly, contains a new Maryland Public Ethics Law. It is anticipated that the Governor will sign the bill on May 29. The attached document attempts to highlight some of the more important provisions. In reviewing the document, I ask that you keep the following points in mind:

1. Except for its extension of coverage to certain persons in the judicial branch, the Maryland Public Ethics Law contains few really new departures. Most of its provisions are modeled upon or similar to existing provisions of Maryland Rules 1231 and 1232; the financial disclosure provisions of Art. 33 of the Code; the lobbying laws contained in Art. 40 of the Code; and the conflict of interest provisions contained in Art. 19A of the Code; see also the provisions of the Code of Ethics for Clerks of Court adopted by the Maryland Court Clerks' Association.

2. The new Act would not appear to apply, in general, to retired judges who are subject to recall for temporary service, except when they are actually recalled for temporary service. As to such judges, it does not appear that the new Act will place them in a substantially different position than would adoption by the Court of Appeals of the amendments to Maryland Rule 1231 that were published in 6:7 Md. R. 572 (4/6/79).

3. Because this material has been prepared mainly for personnel of the judicial branch of government, it emphasizes the effect of the Maryland Public Ethics law on those personnel. This is not to say that the provisions of the new law do not apply very similar restrictions on other public employees. The conflicts of interest and financial disclosure provisions applicable to personnel of the executive branch, and the disclosure provisions that will eventually become applicable to local public employees, are for the most part quite similar to those provided for personnel of the judicial branch. Substantial exemptions are provided for members of the General Assembly. During discussion of the bill in the legislature, these were justified by the unique nature of legislative office, and by the requirements imposed by a part-time legislature.

Because some of the conflicts and disclosure provisions will apply to those in the judiciary not now subject to them (for example, employees in Grade 18 or above and, in the case of financial disclosure particularly, masters, auditors, examiners, referees, and District Court commissioners) those of you who occupy administrative positions may wish to organize orientation sessions to discuss the new law with such individuals. If the Administrative Office can be of any assistance in this regard, please call upon us.

WHA:jc:dfh

P.S.

I should like to add a word of thanks to Peter Homer for his assistance in the preparation of the attached document and for his help during the legislative session with respect to all matters dealing with the Public Ethics Law.

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MARYLAND PUBLIC ETHICS

The 1979 Legislation and the Judicial Branch

May 18, 1979

I. BACKGROUND.

A. Chronology.

In 1978, efforts to enact a comprehensive public ethics law failed. This failure produced the appointment of a Special Joint (Legislative) Committee on Ethics and Conflicts of Interest. The Committee was instructed to draft ethics legislation for early introduction at the 1979 session of the General Assembly.

Partly because of the distractions of an election year, and partly because of the inability of the Committee members to agree, the "early introduction" objective was not realized. While Senator Byrnes did prefile SB 2 at the 1979 session, this was merely a restatement of 1978 legislation (which generally excluded judges from its provisions) and was not a product of the Committee's work.

On February 12, 1979, after much pulling and hauling, HB 912 and SB 581 were introduced. However, neither one reflected a consensus of the Special Joint Committee, and HB 912 also met with considerable concern in the standing committee to which it was assigned (Constitutional and Administrative Law).

Finally, on March 8, only a month before adjournment, Senator Byrnes and others introduced SB 1120. This bill was also extensively amended, but with tireless efforts of Senator Byrnes, considerable pressure from the legislative leadership, and support from the Governor, was enacted as the Maryland Public Ethics Law. Governor Hughes is expected to sign this bill on May 29, 1979.

B. Policy Considerations.

1. Should the legislation apply to the judiciary?

So far as the Judicial Branch is concerned, several policy decisions were presented both to the Special Committee and to the General Assembly. The first was whether or not the third branch should be included in the legislation at all. It was argued that such coverage was unnecessary (at least with respect to judges and judicial officers) because of the existing provisions of Maryland Rules 1231 and 1232. Questions were also raised as to the constitutionality of subjecting the judiciary to standards and processes imposed by the legislative

and (under some proposals) by the executive branch.

The first argument received an essentially political response: If legislators and executive branch officials are to be covered, why not judges? The second was answered by the Attorney General, who, on October 26, 1978, advised Senator Conroy "that the General Assembly has the authority to enact legislation: (1) prescribing ethical standards for members of the three branches [of State government]; [and] (2) establish a board to determine violations of the statute by members of the Executive and Legislative branches..."; 63 Op. Atty. Gen. ____ (1978). A copy of the opinion is attached.

This conclusion (as to the basic legislative power) was the same one reached by Congress when it enacted the Ethics in Government Act of 1978 (Public Law 95-521), as it applies to personnel of the federal judicial branch; see 28 U.S.C.A. App. §§301-309. However, the federal legislation, so far as it affects the judiciary, relates mainly to financial disclosure. *

2. Enforcement and advisory mechanisms.

There was at one point considerable sentiment for making the State Ethics Commission the sole vehicle for enforcing and interpreting ethics provisions with respect to personnel of all three branches. In his October 26, 1978 opinion, the Attorney General indicated that this might be a constitutional approach with respect to judges, but he also presented contrary arguments, and suggested that as a matter of policy, at least where judges are concerned, it would be undesirable to create another body with authority similar to that of the Commission on Judicial Disabilities.

In any event, the legislature in many respects (and certainly as to judges) followed the federal lead, and provided for enforcement (and to a considerable degree, interpretation) by each branch with respect to its own personnel.

3. Criminal Sanctions.

SB 1120, like SB 581, provided generally for criminal (as well as other) sanctions for violations of the Act. HB 912 in general eschewed such sanctions. SB 1120, as enacted, followed essentially the House approach in this respect, providing criminal sanctions only for violations of Title 5 (Lobbying). Such sanctions are, in fact, presently provided for lobbying violations.

4. Other Matters.

Other policy considerations will be discussed in connection with specific provisions of the Act.

II. STRUCTURE OF THE ACT.

The Act enacts a new Article 40A of the Code, in the process repealing or amending many existing provisions. The Act is divided into the following seven titles:

* According to the Washington Post of May 16, 1979, several federal judges have challenged the federal law on the grounds, among other things, that it violates separation of power. This action seems as ill-conceived as the pay increase litigation recently lost by another group of federal judges.

Title 1: General Provisions (Short Title, Legislative Policy, Conflicts of Law, and Definitions).

Title 2: Administration.

Title 3: Conflicts of Interest.

Title 4: Financial Disclosure.

Title 5: Lobbying Disclosure.

Title 6: Local Governments.

Title 7: Enforcement.

The Act's effective date is July 1, 1979.

III. APPLICATION OF THE ACT TO THE JUDICIAL BRANCH.

1. Legislative Policy.

The Act must be read in the context of the findings and policy adopted by the General Assembly. These include a recognition that "our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and officers"; finding that "the people have a right to be assured that the impartiality of public officials and officers will be maintained"; a statement condemning "improper influence and the appearance of improper influence" in the conduct of public business; an announced intent to require financial disclosure and set "minimum standards" for the conduct of public business; and a direction to construe the Article liberally, except for its provisions relating to criminal sanctions; §1-102.

2. Conflicts with Other Provisions.

Also critical to proper interpretation of the Act is the requirement that: "Other provisions of law or regulations relating to conflicts of interest, financial disclosure, or lobbying disclosure shall apply when the provisions of those laws or regulations are more stringent that this Article"; §1-103. This rule must be kept in mind when comparing provisions of the Public Ethics Law to existing provisions, such as the Canons and Rules of Judicial Ethics, since a stricter provision of the statute will supersede a less strict provision of the Canons or Rules, and vice versa. Examples of several such situations will be cited in the ensuing discussion.

3. Definitions.

Finally, the Act must be read with a careful understanding of its own definitions of various words and phrases. The more important ones will be noted as we consider specific provisions of the Act.

B. Conflicts of Interest.

Title 3 of the Act includes proscriptions in five different areas: official action when there is a conflict of interest; inappropriate employment relationships; improper use of prestige of office; receipt of certain gifts; and disclosure of confidential information. In addition, the Title requires the inclusion of a non-employment provision in State contracts exceeding $25,000.

1. Conflicts of Interest - disqualification.

Section 3-101 provides that:

> an official or employee may not participate in any matter, except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to that matter, if, to his knowledge, he, his spouse, parent, minor child, brother, or sister has an interest therein, or if any of the following is a party thereto:
>
> (1) Any business entity in which he has a direct financial interest of which he may be reasonably expected to know;
>
> (2) Any business entity of which he is an officer, director, trustee, partner, or employer, or in which he knows any of the above listed relatives has such an interest;
>
> (3) Any business entity with which he or any of the above listed relatives is negotiating or has any arrangement concerning prospective employment;
>
> (4) Any business entity which is a party to an existing contract with the official or employee, or which the official or employee knows is a party to a contract with any of the above named relatives, if the contract could reasonably be expected to result in a conflict between the private interests of the official or employee and his official State duties;
>
> (5) Any entity, either engaged in a transaction with the State or subject to regulation by the agency of which he is an official or employee, in which a direct financial interest is owned by another entity in which the officer or employee has a direct financial interest;
>
> (6) Any business entity which is a creditor or obligee of the official or employee, or which he knows is a creditor or obligee of any of the above named relatives, with respect to a thing of economic value and which, by reason thereof, is in a position to affect directly and substantially the interest of the official or employee or any of the above named relatives.

It will be observed that the restrictions of §3-101 apply to "officials and employees". * So far as the judicial branch is concerned, these two categories include three separate groups of people:

* The word "officials", when used without any modifier, includes both "State Officials" and "Public Officials"; §1-201(v).

a. State Officials, defined in §1-201(cc) as any judge or judge-elect of an Article IV, §1 court; a master, examiner, auditor, referee, and District Court commissioner; a clerk of a circuit court or of the Supreme Bench; and a register of wills.

b. Public Officials, defined in §1-201(z) as any individual who "is paid at a rate equivalent to State pay grade 18 or above [effective July 1, 1979, the base step of grade 18 provides an annual salary of $19,619] and who is not a State Official" if this individual is "in the judicial branch of government, including an individual employed in the office of a clerk of court, or paid by a political subdivision to perform services in any Orphans' Court, a circuit court for a county, the Supreme Bench of Baltimore City, or one of its courts, and any individual employed by the Attorney Grievance Commission, the State Board of Law Examiners, or the Standing Committee on Rules" who is paid at least at the grade 18 level.

This definition gives recognition to the unique status of the judicial branch as a State court system which, nevertheless, includes some locally-compensated individuals. The General Assembly decided that those individuals, even though locally employed, should be held to State conflicts and disclosure standards, if paid at a level of Grade 18 or higher.

c. Employees, defined in §1-201(h) as "any person employed in the judicial branch of State government" and who is not a State or Public Official. This definition, too, extends State conflicts standards to locally-compensated employees of the courts.

While these definitions are quite broad, please note that they do not cover everyone. For example, members of the Attorney Grievance Commission, the Board of Law Examiners, the Rules Committee, and the Commission on Judicial Disabilities, and trustees of the Clients' Security Trust Fund are neither State Officials, Public Officials, nor Employees by virtue of such membership. Of course, a person who is a member of one of those bodies might be subject to the Act because of some other status. For example, a judge who is a member of the Rules Committee would be subject to the Act because of his judicial office, but not because of membership on the Rules Committee.

Keeping in mind these definitions, the basic thrust of §3-101(a) is to prohibit an official or employee of the judicial branch from participating, except in a ministerial way, in a matter in which the official or employee's spouse, parent, minor child, brother, or sister has an interest. Under §1-201(m), "interest" means "any legal or equitable economic interest ... owned or held ... in whole or in part, ... directly or indirectly" except: (1) an interest held in a fiduciary or agency capacity (unless the holder also has an equitable interest); (2) an interest in a time or demand deposit in a financing institution; (3) a common trust fund or trust which forms part of a pension or profit sharing plan with more than 25 participants and qualified by the IRS under §§401 and 501 of the IRC of 1954; and (4) an interest in an insurance or endowment policy or annuity contract.

As to judges, the provisions of Rule 1231, Canon XIII, and Ethics Rule 2, appear to be more stringent than the statutory provision. This is because the definition of "near relative" in Rule 2 ("consanguinity or affinity in the third degree, counting down from a common ancestor to the more remote") is far broader than the list of relatives provided in the statute. Also, the meaning of "interest" as used in Rule 2 may be broader than that of the statute; see Advisory Opinion No. 50 (1.17/77).

With respect to judicial officers (masters, commissioners, etc.) the provisions of Rule 1232, Standard XII, and Rule 2, appear to be as broad as the cited Rule 1231 provisions, and thus stricter than the statute.

As to circuit court and Supreme Bench clerks, the statute appears to be more stringent than Canon IV of the Code of Ethics for Clerks of Court, which provides only that: "No Clerk shall participate in any matter involving his office or the Court in a way that might enhance a personal financial interest he may have with respect to the matter."

In the case of other officials and employees in the judicial branch, there are no presently-applicable State canons or standards, and the statute would appear to govern them.

The remaining six paragraphs of §3-101(c) list situations in which an official or employee should disqualify himself if certain entities are parties. These include:

(1) Matters involving a business entity in which the official or employee has "a direct financial interest of which he may be reasonably expected to know." In view of the limited definition of "financial interest" in §1-201(1), it would appear that the provisions of Canon XXVIII (as to judges) and Standard XXIII (as to judicial officers) are more stringent than the statute, and will govern. As to others in the judiciary, the statute will apply.

(2) Matters involving a business entity in which the official or employee is an officer, director, trustee, etc., or in which he knows that his spouse, parent, minor child, brother or sister has such an interest. Once again, Canons XIII and XXVIII and Rule 2 and Standards XII and Rule 2 seem at least as strict if not stricter than the statute; see also Canons IV, XXIII, XXV, and XXVI, and Standards IV, XIX, and XXI.

There are no present provisions as to judiciary personnel other than judges and judicial officers. As to these personnel, the statute will apply.

(3) Matters involving any business entity with which the official or employee or one of his listed relatives is negotiating or has any arrangement concerning prospective employment. The same Canons and Standards would appear to require a judge or judicial officer to disqualify himself under these circumstances. Again, there is no present similar provision as to other officials and employees.

(4) Matters involving any entity which is a party to a contract with the official or employee or one of his listed relatives, if the contract could reasonably be expected to result in a conflict between private interests and official duties. The same reasoning would seem to apply here as under (3).

(5) Matters involving any entity engaged in a transaction with the State or subject to regulation by the agency of which he is an official or employee, if a direct financial interest in the first entity is owned by another entity in which the official or employee has a direct financial interest. The same reasoning would seem to apply here as under (3), keeping in mind that under the statute, financial interest is limited to (1) "ownership of an interest as the result of

which the owner has received within the past 3 years, is presently receiving, or in the future is entitled to receive, more than $1,000 per year; or (2) ownership, or the ownership of securities ... representing or convertible into ownership, of more than 3 percent of a business entity."

(6) Matters involving any business entity which is a creditor or obligee of the official or employee, or which he knows is a creditor or obligee of one of his listed relatives, if the existence of the creditor-debtor relationship is "in a position to affect directly and substantially the interest of the official or employee or ... relative." The same reasoning would seem to apply here as under (3).

Note that subsection (b) of §3-101 provides an exemption which is probably more liberal than that sometimes applied with respect to judges and judicial officers. It says that if "a disqualification pursuant to subsection (a) leaves any body with less than a quorum capable of acting, or if the disqualified official or employee is required by law to act or is the only person authorized to act, the disqualified person shall disclose the nature and circumstances of the conflict, and may participate or act." However, the Court of Appeals seems to have recognized a somewhat similar rule in Chairman of the Board of Trustees etc. et al. v. Waldron, ____ Md. ____. No. 40, Sept. Term, 1978 (May 10, 1979).

The provisions of §3-101(a) with respect to disqualification for conflicts of interest are quite similar to the provisions of Section 6, Article III of the Code of Ethics for Executive Branch Officers and Employees; Executive Order 01.01.1978.09 (6/23/78); 5:15 Md. R. 1177 (7/28/78); see also Art. 19A, §§1 and 2 (which are somewhat weaker than the Code of Ethics).

2. Inappropriate employment relationships and representation activities.

Sections 3, 5, and 7 of Article III of the Code of Ethics for Executive Branch Officers and Employees contain restrictions on employment relationships and representational activites. Some of these concepts have been imported into the Maryland Public Ethics Law, at lease in some form.

Section 3-103(a) of the Maryland Public Ethics Law prohibits an official (including a State official and a public official; recall the definitions given above) and an employee from being employed by or having an interest in any entity "subject to the authority of that official or employee or of the government agency with which he is affiliated...." Nor may an official or employee be employed by any entity "which is negotiating or has entered a contract with that agency."

As to judges and judicial officers, at least full-time ones, few problems should be experienced. The phrase "subject to the authority of" clearly is intended to mean "having continuing regulatory authority over", as opposed to denoting the general and potential authority courts have over any one who might be brought before them at some future date. And most of these officials are not usually involved in negotiating for or letting contracts (although an administrative judge possibly might be).

In any event, the existing provisions of Canons IV, XXIII, XXVI and XXX and Rules 3, 5, and 6, as well as Standards IV, XIX, and XXV and Rules 4 and 5 would seem generally to prohibit most of the kinds of conduct proscribed by §3-103(a), with respect to full-time judges, masters, and commissioners.

Part-time (Orphans' Court) judges and part-time judicial officers (those who may engage in some practice of law by virtue of Canon XXX and Rule 5/Standard XXV and Rule 4) should not have employment problems under this subsection, either, even if employed by a law firm as a lawyer. Neither Orphans' Court judges nor judicial officers would seem to have regulatory (e.g. licensing or disciplinary authority) over either law firms or lawyers. In any event, it would seem that as a general rule, the regulatory authority exercised by courts over lawyers has to do with individual lawyers, not law firms. It is doubtful that the word "entity" as used in the statute is intended to apply to individual lawyers.

Of course, most other personnel within the judicial branch do not regulate "entities" either, assuming that an individual is not an "entity". If, however, such bodies as the Attorney Grievance Commission or the Board of Law Examiners may be conceived of as regulating either lawyers or law firms, and if individuals are "entities", then the employees of those bodies should be careful not to be employed by a lawyer or law firm. Note, please, that members of the Attorney Grievance Commission and the Board of Law Examiners are neither "officials" nor "employees" as defined in the Maryland Public Ethics Law. Thus, the prohibitions of §3-102(a) don't apply to them.

Section 3-103(b) applies to former officials and employees, and prohibits them from assisting or representing any party but the State "for compensation in a ... matter involving the State government if that matter is one in which" the official or employee "significantly participated as an official or employee."

Since the Canons of Judicial Ethics, according to Advisory Opinion No. 17 (9/19/73), do not apply to a judge after his retirement*, this provision is new to the judiciary, although general concepts of professional ethics might produce the same result in the case of post-public-service law practice; see Rule 1230; DR 9-101.

Former officials and employees, and those who in the future will achieve "former" status should heed the provisions of this subsection, even though the only sanction provided by the Act for violation by a former official or employee would appear to be an injunction: see §7-101.

Subsections (c) and (d) of §3-103 must be read together by personnel of the judicial branch. The latter, applicable only to that branch, prohibits any full-time official or employee of the judicial branch from representing a party "before a court or agency of the judicial branch, except in the discharge of his official duties." The exception, of course, is intended to permit such activities as "official" litigation on behalf of bodies like the Attorney Grievance Commission and the Commission on Judicial Disabilities.

* Note that the Court of Appeals has amended Ethics Rules 14 and 15, effective July 1, 1979, to make certain of the Canons and Rules of Ethics applicable to former judges subject to recall for temporary service.

The general prohibition, it will be noted, applies essentially to representation of a party before a court. With respect to full-time lawyers and judges, it is, therefore, not as broad as the proscriptions of Canon XXX and Rule 5/ Standard XXV and Rule 5. These provisions essentially prohibit virtually all professional employment for full-time judges and judicial officers. Section 3-103(d) is also less broad than such provisions as §§13-101 and 13-102 of the Courts Article (no practice of law by personnel of the AOC or by the 7th Circuit Administrator), §22-2 of the Code of Public Local Laws of Baltimore City (1969) (no practice of law by the Supreme Bench administrator), and §2-202 of the Estates and Trusts Article (no practice of law by registers of wills). The reader will recall that under §1-103 of the Maryland Public Ethics Law, the stricter provision prevails.

On the other hand, §3-103(d) is probably new (in form, if not in practice) for clerks of court and their employees and for many other employees, both State and local, within the judicial branch.

Bear in mind that §3-103(d) applies only to full-time officials and employees. Those who are part-time (e.g., Orphans' Court judges and part-time judicial officers) are covered by §3-103(c) (which also applies to full-time officials and employees). Subsection (c) prohibits representation of a party for contingent compensation before any agency except a judicial agency, the Workmen's Compensation Commission, or, if permitted by law or regulation, a quasi-judicial agency. For example, a part-time examiner may represent a client before the Workmen's Compensation Commission, and may obtain a contingent fee. Note, however, that even though the Canons and Standards do permit some law practice by part-time judges and judicial officers, they emphasize the delicacy of these situations. A part-time judge may never practice in the court of which he is a judge; Canon XXX; Rule 5. A part-time judicial officer must be "scrupulously careful". Note, too, that §2-109 of the Estates and Trusts Article prohibits an orphans' court judge from "acting as attorney or solicitor in a law, equity, or criminal court during his term of office" (except in Prince George's County; Art. 10, §30).

The remaining express restriction on employment is §3-105, which prohibits an official or employee "whose duties ... include matters relating to ... the subject matter of any contract binding ... the State" to become or be, while still an official or employee, employed by the other party to the contract. This provision is virtually identical to Art. 19A, §9 of the present Code except that the new provision applies to any contract involving in excess of $1,000, while Art. 19A, §9 applies only to contracts involving over $25,000. Art. 19A, of course, does not apply to the judicial branch; on the other hand, a violation of it involves criminal sanctions, whereas a violation of §3-105 does not.

So far as judges and judicial officers are concerned, §3-105 would seem to bring little new; see the Canons, Standards, and Rules cited in connection with §3-103.

3. Misuse of Prestige of Office.

Like the present provisions of Section 4, Title III of the Code of Ethics for Executive Branch Officers and Employees, §3-104 prohibits the intentional use of the prestige of office for the private gain of the office-holder or another.

Interestingly enough, this section applies only to public officials and employees. Since it does not apply to State Officials, it does not cover judges, judicial officers, circuit court and Supreme Bench clerks, and registers of wills. To depart for a moment from our general approach of not discussing applicability of provisions to members of the other two branches, we note that this lapse also excludes from the proscription of the section all legislators; constitutional officers of the executive branch, state's attorneys, and sheriffs. One might argue that this arrangement of the Act lets all the big fish swim free, and it may be that this is simply a drafting error, produced by changes in the approach to definitions; both SB 581 and HB 912 would have covered individuals who escape under SB 1120.

Be all that as it may, it makes little difference to judicial officers and judges, since improper use of the prestige of office is clearly banned by Canons IV and XXVIII and Rule 9/Standards IV, XX, and XXIII and Rule 7.

4. Gifts.

The restrictions on gifts were among those most fiercely fought over: "For where your treasure is, there will your heart be also"; The Bible, Luke 12:34 (Revised Standard Version).

What we ended up with is a definition of gift as "the transfer of anything of economic value ... without adequate and lawful consideration" except for campaign contributions; §1-201(o).

An official or employee may not solicit any gift, as so defined. An official or employee may not "knowingly accept a gift, directly or indirectly, from any person whom the official or employee knows or has reason to know: (1) is doing or seeking to do business of any kind with his agency; (2) is engaged in activities which are regulated or controlled by his agency; (3) has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or non-performance of his official duties; or (4) is a registrant with respect to matters within his jurisdiction." §3-106(a).

We can forget (4), as a practical matter, since registrants are lobbyists who seek to influence the legislature or executive branch. One who seeks to influence the judiciary branch or some court is not a registrant. Even so, at first glance, it looks as though we have a rather stringent anti-gift provision. But wait: as in the case of Section 1, Title III of the Code of Ethics for Executive Branch Officers and Employees, there are some more exceptions. These appear in §3-106(b).

Section 3-106(b) provides that except in unusual circumstances in which the gift would "tend to impair the impartiality and independence of judgment of the official or employee ... or ... would give the appearance of doing so, or ... the recipient ... believes or has reason to believe that it is designed to do so"; Section 3-106(d) does not apply to a number of types of gifts. That is, neither the prohibition against soliciting nor the prohibition against receiving is applicable. These exempted gifts are:

(1) Meals and beverages (whether or not for consumption on the premises);
(2) Ceremonial gifts or awards of "insignificant monetary value";
(3) Unsolicited gifts of "nominal value" or "trivial items of informational value";

(4) Reasonable meal, travel, lodging and entertainment expenses for an official or employee and spouse "for a meeting which is given in return for participation in a panel or speaking engagement at the meeting";

(5) Gifts of tickets or free admission extended to an elected constitutional officer to attend professional or intercollegiate sporting events or charitable, cultural, or political events;

(6) Gifts exempted by the Ethics Commission [this provision may not apply to judges].

(7) Gifts from a person related by blood or marriage [no limitation on how distant the relationship may be] or a member of his household (essentially a financially dependent relative who shares the official's household or one over whose financial affairs the official has control); and

(8) Honoraria.

These standards, such as they are, would seem for the most part to impose a substantially less strict rule of conduct than Canons IV, XXIV, and XXXI and Rule 7/Standards IV, XX and XXVI and Rule 6.

The Clerks' Code of Ethics, in Article III, provides: "No Clerk, deputy, or employee under his control, shall solicit or accept any gift, favor, loan, service, promise, employment or other thing which may influence the performance of his duties"; see also Rule 1220, which provides that an attorney may not give "to an officer or employee of a court, or of an office serving a court" and that an "officer or employee of a court or of any office serving a court" may not accept from an attorney "or any person regularly doing business with the court," any "gratuity or gift ... or any compensation related to such officer's or employee's official duties and not expressly authorized by rule or law."

In other words, the statute produces very few, if any, additional strictures on judges, judicial officers, clerks, and many other court officers and employees. It does provide restrictions on the conduct of judicial branch personnel not covered by any of the present provisions, but those restrictions do not seem unduly severe.

If the Maryland Public Ethics Law is less strict than existing provisions, the existing provisions will govern. For example, §3-106(b)(5) might seem to allow a lawyer appearing before a circuit court judge (an elected constitutional officer) to give, and the judge to receive, race track passes or football tickets. However, this would clearly be impermissible under Ethics Rule 7 and Maryland Rule 1220. Could such a judge accept such a gift from a non-lawyer not involved in litigation in his court, and not likely to be? This would be permitted by §3-106(b)(5), and not clearly prohibited by Canon XXI, Ethics Rule 7, or Maryland Rule 1220. Interestingly enough, in this latter situation, were the potential recipient of the passes a District Court judge, §3-106(a) would bar the gift; a District Court judge is not an elected constitutional officer and thus not within the §3-106(b)(5) exception.

5. Disclosure of Confidential Information.

Section 3-107 prohibits an official or employee from disclosing or using for his own or another's economic benefit "confidential information he has acquired by reason of his public position and which is not available to the public" except in the discharge of his official duties; see Art. III, §2 of the Code of Ethics for Executive Branch Officers and Employees and Art. V of the Clerks' Code of Ethics.

This provision may go a bit further than Canon XXV, which provides only that a judge "should not utilize information coming to him in a judicial capacity for purposes of speculation." There is, moreover, no precisely parallel standard in Rule 1232. Thus, §3-107 may add a new standard of conduct not specifically applicable to judicial branch personnel at present.

6. Contract Provisions.

Section 3-108 requires every contract under which the State is required to pay over $25,000 in any one fiscal year to contain a provision (set forth in the section) prohibiting a State employee whose duties relate to the contract from becoming an employee of the other party to the contract; compare §3-105. If this provision is omitted from a contract, the State is not liable on it.

This language is drawn directly from Art. 19A, §8, which is not applicable to the judicial branch. Obviously, after July 1, 1979, the provisions of §3-108 will apply to contracts let by the judiciary, and if the contract payment exceeds $25,000, the proper language must be included.

C. Financial Disclosure.

While many of the "conflict of interest" provisions either are less strict than those now applicable to personnel of the judicial branch, or spell out rules of conduct most of us would follow in any event, this is not equally true of the provisions of Title 4 of the Maryland Public Ethics Law. This is because Title 4 extends disclosure requirements to many individuals in the judicial branch not presently required to disclose.

1. Judges.

As to judges, however, there is virtually no change. Section 4-101, the basic disclosure provision, exempts those "who file pursuant to §4-105". The latter section (basically a rewrite of present Art. 33, §29-9) requests the Court of Appeals to require disclosure, with respect to judges, including judges of the orphans' courts, of "such relevant information concerning their financial affairs as may be deemed necessary or appropriate to promote the continued trust and confidence of the people of the State of Maryland in the integrity of the State judiciary." This is the present law, and is implemented by Ethics Rule 8.

The Maryland Public Ethics Law requires no change in present financial disclosure provisions pertaining to judges, except that §4-105(c) requires that copies of their financial disclosure statements be transmitted to the State Ethics Commission "within 30 days of receipt by the Court of Appeals or its designee" [the State Court Administrator].

2. Judicial Officers.

Ethics Rule 8 applies only to judges; there is no comparable standard or rule pertaining to judicial officers. Section 4-105 asks the Court of Appeals to impose disclosure requirements on "masters, examiners, commissioners, auditors, and referees in the judicial branch ...." As in the case of judges, the Court is free to decide what shall be disclosed, to adopt forms, etc. As in the case of judges, copies of disclosure statements must be filed with the Ethics Commission, after filing with the judiciary, so that it will constitute a single repository of all such statements.

Presumably, the Court will wish to add to Rule 1232 a rule like the Ethics Rule 8 now included in Rule 1231.

3. Other Judicial Branch Personnel.

Section 4-101 requires all "officials and candidates for office as State Officials" except the judges and judicial officers covered by §4-105 to file disclosure statements pursuant to Title 4. So far as the judicial branch is concerned, these include circuit court and Supreme Bench clerks and registers of wills and candidates for those offices (presently required to file pursuant to Art. 33, §29-3), and personnel, State and local, of the judicial branch classified or compensated at State grade level 18 or above. This extends to staff personnel of the appellate court clerks' offices, the District Court, the Administrative Office of the Courts, the Attorney Grievance Commission, the State Board of Law Examiners, the Standing Committee on Rules, the circuit court and Supreme Bench clerks' offices, the registers of wills' offices, and employees of the circuit courts and Supreme Bench, if paid at or above the specified level.

In addition, §4-106 provides that appointees of the Court of Appeals or its Chief Judge, other than those covered by §§4-101 and 4-105 (e.g., members of the Attorney Grievance Commission or the Board of Law Examiners) may be required to file disclosure statements if the Chief Judge of the Court of Appeals so orders. The matter is entirely discretionary with the Chief Judge.

As to judicial branch personnel required to disclose under §4-101, they must file statements annually (by April 15 of each year) under oath or affirmation. The statements are to be filed with the Ethics Commission on forms prescribed by it. Efforts to keep those filings within the judicial branch and controlled by it were unsuccessful, perhaps because legislators remained unconvinced that the doctrine of separation of powers required such an approach for individuals other than judges or judicial officers. Arguments to the contrary, however, may be made.

Because the present judicial financial disclosure forms were modelled quite extensively on the present executive branch forms, the requirements imposed on personnel under §4-105 will not necessarily be very different from those now imposed upon judges. Section 4-103 outlines the requirements as to other personnel of the judicial branch. They call for filing:

a. A schedule of interest in real property, wherever located, essentially as now required for judges;

b. A schedule of all interests in any corporation, again, essentially like that now used for judges, subject to a requirements that as to an interest acquired after April 15, 1974, date and manner of acquisition, identity of transferor, and nature and amount of consideration or fair market value must be given, as in the case of real estate.

c. A schedule of interest in any business entity doing business with the State.* This is less broad than the disclosures required of judges, who must

* "Doing business with the State is limited to ... being a party to any one or any combination of sales, purchases, leases, or contracts to, from or with the State, or any agency thereof, involving consideration of $5,000 or more on a cumulative basis during the calendar year for which a required statement is to be filed (as of the awarding or execution of a contract or lease, the total then ascertainable consideration thereby committed to be paid, regardless of the period of time over which such payments are to be made shall be included)...."

reveal interests in any business entity, whether or not it does business with the State. Judges must also disclose ownership of obligations of others (e.g., bonds, notes, etc.) but this does not seem to be required by §4-103(c). As in the case of an interest in a corporation, if an interest in a business entity doing business with the State was acquired after April 15, 1974, the disclosure must include date and manner of acquisition, identity of transferor, and consideration or fair market value.

d. A schedule of gifts. The statute has some unusual provisions in this area. First, only a gift permitted by law need be disclosed. Thus, if a circuit court clerk receives a gift of race track passes (permitted by §3-106 because he is an elected constitutional official) he must generally disclose it. If the same gift is received by the Clerk of the Court of Appeals (who as an appointed constitutional officer is not permitted to receive such gifts) he need not disclose it. Presently, judges must disclose gifts whether "permitted" or not, unless the gift is exempted by some specific provision of Schedule D of the disclosure statement.

Second, as a general rule, a gift worth over $25 or a series of gifts totaling $100 received from one person in the year must be disclosed. This is more stringent than the present requirements for judges, who need generally disclose only each gift in cash in excess of $100 and each gift of a negotiable instrument or tangible property worth over $100 when received.

Third, persons subject to §4-103 need disclose only gifts from or on behalf of a person who does business with the State, who is regulated by the State, (quaere, aren't we all?) or who is a registrant (lobbyist). These limitations do not presently apply to gifts received by judges.

Fourth, campaign contributions need not be reported as gifts, the same as for judges.

Fifth, gifts "received from members of the immediate family, other children, and parents of the person making the statement" need not be reported. "Immediate family" means spouse and dependent children; §1-201(p). Presently, judges need not report any gift from a relative within the third degree of consanguinity, or the spouse of such a relative; thus, the judges' exemption is somewhat broader.

Sixth, judges presently need not report gifts of books for official use. However, this exemption may be virtually meaningless, since publishing companies appear to be giving up the practice of giving free books to judges.

e. A schedule of offices, directorships, or salaried employment by the person filing the statement or a member of his immediate family, if the relationship is with a corporation or other business entity doing business with the State. Judges are required to disclose any such relationship, whether or not it involves a corporation or entity doing business with the State.

f. A schedule of all liabilities to persons doing business with the State other than retail credit accounts. Judges must disclose all liabilities, other than retail credit accounts, whether or not the creditor is doing business with the State.

g. A schedule listing members of the immediate family employed by the State. Judges must list all members of the immediate family employed, whether or not employed by the State.

h. The name and address of each place of salaried employment and of each business entity of which "the person or a member of his family was a sole or partial owner and from which the person or a member of his immediate family received earned income". For judges, this requirement would seem to be largely imposed by one or more of Schedules B, C, or G or the present disclosure form.

i. A schedule disclosing anything else the person wants to disclose, also provided for judges.

Filing is with the State Ethics Commission on forms and pursuant to regulations to be promulgated by it.

D. Lobbying.

Title 5 of the Act need concern us little. It carries forward, with little change, the provisions of present law (e.g., Art. 40, §§5 et seq.). In general, a person who receives or expends specified sums for the purpose of attempting to influence legislative or in some cases executive action is required to register; §§1-201(r), 1-201(s), 1-201(aa); 5-103. However, §5-101 exempts a person performing professional services in drafting bills, a person who appears before the legislature or one of its committees or subcommittees at its specific invitation (and who engages in no other activities in connection with the passage or defeat of legislation); and a person who appears pursuant to his official duties as a duly elected or appointed official or employee. The exemptions would appear to cover most official legislative activities by personnel of the judicial branch.

A person who neither spends nor receives funds for such activities; that is, one who acts on his own behalf, expressing his personal concerns, to legislators, is not covered by Title 5. Perhaps it would not be constitutional to restrict such activities.

E. Local Government and Conflict of Interests.

Title 6 of the Act is intended to force local governments to enact financial disclosure provisions for their employees by December 31, 1980. Section 6-101(a) exempts all officials and employees of the judicial branch from Title 6. This is because, as previously noted, State officials, public officials, and employees in the judicial branch are all covered by the pertinent provisions of Titles 3 and 4 of the Act, whether they are State or local employees in the technical sense.

IV. ADMINISTRATION AND IMPLEMENTATION.

At one point, some urged the creation of a State Ethics Commission that would have general regulatory, enforcement, and advisory opinion powers as to all persons subject to the Act. Because of obvious constitutional problems derived from the separation of powers doctrine, this approach was abandoned.

Under the Maryland Public Ethics Law as enacted, three bodies are designated to administer and implement the Article. These are the Joint Committee on Legislative Ethics, as to members of the General Assembly; the Judicial Disabilities Commission "or [and?] a body to be designated by the Court of Appeals, acting as an advisory body as to the application of the provisions of Titles 3 and 4 to State Officials of the judicial branch"; and the State Ethics Commission as to all other matters; §2-101.

The State Ethics Commission will consist of five members, three appointed by the Governor with the advice and consent of the Senate, one nominated by the President of the Senate, and one by the Speaker of the House. None of these people may be federal, State, or local elected or appointed officers or employees, or lobbyists (registrants). They serve for five year terms, are removable by the Governor for cause, and may receive compensation. The Commission will elect its own chairman, and will have a staff including a general counsel, a staff counsel, and others; §2-102.

A. Administration and Implementation - Judges.

1. Discipline.

The Ethics Commission is empowered to receive complaints concerning judges; §2-105(a). However, if it receives such a complaint, it may do no more than forward it to the Commission on Judicial Disabilities. Any further action is up to the latter Commission; §2-105(b). This is consistent with Art. IV, §4B(a) of the Constitution, and Maryland Rule 1227. In short, the judicial disciplinary process remains essentially as it is now.

2. Advisory Opinions.

Under §§2-101(2) and 2-104(a) the Judicial Ethics Committee may continue to issue advisory opinions to judges not only with respect to Rule 1231 matters, but also with respect to matters concerning the application of the Maryland Public Ethics Law; full implementation of this provision may require some amendment of Ethics Rule 16; see also §1-201(b). Provision for publication of advisory opinions parallel those established in Ethics Rule 16.e. Unless the advisory body decides otherwise, a person subject to the Act may rely on a previously published advisory opinion unless it is plainly inconsistent with the Act; §2-104(d). See Ethics Rule 16.c.

3. Financial disclosures.

Although the State Ethics Commission is empowered to review all financial disclosure statements, and to notify "officials and employees of any omissions or deficiencies", this provision, if used at all with respect to judges, would seem to be purely hortatory; see Ethics Rule 8.

B. Administration and Implementation - Judiciary Officers; Clerks of Circuit Courts/Supreme Bench; Registers of Wills.

1. Discipline.

These individuals are subject to State Ethics Commission disciplinary procedures, unless there is some constitutional difficulty with this approach. Because the powers of the Commission on Judicial Disabilities are limited to judges, discipline of these non-judicial personnel could not be assigned to the latter Commission.

2. Advisory Opinions.

By virtue of §§1-201(b) and 2-101(2) the Committee on Judicial Ethics (or some other body designated by the Court of Appeals) has the authority to give advisory opinions to judicial officers, clerks, and registers of wills, all of whom are State officials of the judicial branch, as defined in the Act. While Ethics Rule 16.c now gives the Committee that authority with respect to judicial officers, it will have to be expanded to include clerks and registers.

3. Financial disclosure.

Judicial officers file under the same provisions as judges. However, clerks and registers fall solely under the jurisdiction of the State Ethics Commission.

C. Other Personnel of the Judicial Branch.

All other personnel of the judicial branch who are subject to the Maryland Ethics Law come under the authority of the State Ethics Commission. This authority includes disciplinary action, rendition of advisory opinions, and financial disclosure for those required to disclose.

D. State Ethics Commission Procedures.

The State Ethics Commission has the usual powers to issue rules and regulations to implement the Act, subject, it seems, to special limitations as to judges, judicial officers, etc. It may prescribe forms, etc. for the reports it is entitled to receive.

Its disciplinary procedures are much like those used by the Commission on Judicial Disabiliites (§2-105) including confidentiality until it has found a violation.

If it finds a violation, it may issue an order of compliance, a cease and desist order, or a reprimand, or it may recommend to the appropriate authority "if provided by law" censure, removal, or other appropriate discipline.

Judicial review is available under the Administrative Procedure Act. The Commission is entitled to seek judicial relief "as provided in Title 7".

V. ENFORCEMENT.

As appears from the preceding discussion, the Commission's own disciplinary powers are limited. However, Title 7 of the Act gives it power to seek substantial judicial enforcement. As a general rule, these enforcement provisions would not seem to apply to judges, whose discipline is governed by Rule 1231 and Article IV, §§4A and 4B of the Constitution.

A. Civil Enforcement.

As to those subject to the disciplinary authority of the Commission:

1. The Commission may seek injunctive or other relief in a county circuit court or the Baltimore City Court. The court is authorized to issue a cease and desist order, to void certain official action, and to impose civil fines; §7-101.

2. In addition, a person found by the Commission or a court to have violated the provisions of the Act is subject to "termination or other disciplinary action as may be warranted" and to suspension of salary or other compensation "pending full compliance of an order of the Commission or a court"; §7-103.

B. Criminal Enforcement.

Section 7-103 subjects a knowing and willful violation of Title 5 (lobbying) to misdemeanor sanctions (maximum: $1,000 fine or one year's imprisonment or both). These penalties are those presently provided for violations of the lobbying law by Art. 40, §13A(b).

C. Record Keeping.

Section 7-104 requires "any person who is subject to the provisions of this Article" to "obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to complete and substantiate any reports, statements, or records required to be made pursuant to this Article for 3 years from the date of filing the report, statement or record ...." These documents are available for inspection by the State Ethics Commission.

Quaere as to whether this applies to judges, as to whom the Ethics Commission has neither disciplinary or financial disclosure authority. It might not apply to judicial officers, with respect to financial disclosure, as to which the Commission would seem to have no authority. However, since those officers are subject to general Commission disciplinary action, the contrary might also be true. The section clearly applies to all others in the judicial branch.

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October 26, 1978

Honorable Edward T. Conroy
Maryland State Senate
400 James Office Building
Annapolis, Maryland 21401

Dear Senator Conroy:

This is in response to your request on behalf of the Joint Committee on Conflicts of Interest, for our opinion on the authority of the General Assembly to enact conflicts of interest legislation. Specifically, you have asked the following questions:

1. Is there any constitutional impediment to the enactment of a statute by the General Assembly prescribing standards of conduct which forbid conflicts of interest for officers and employees of the Judiciary, the General Assembly, and the Executive?

2. Is there any constitutional objection to the establishment of a single board, appointed by the Governor, to investigate and determine violations of these standards?

3. What constitutional limitations, if any, are there on the penalties which such a board might be authorized to impose for violations of the statute?

We conclude that the General Assembly has the authority to enact legislation: (1) prescribing ethical standards for members of the three branches; (2) establishing a board to determine violations of the statute by members of the Executive and Legislative branches; and (3) subject to some substantial limitations, authorizing the board to impose penalties for violations of the statute.

I.

Setting the Standards

The faithful performance of office is a general duty which the Constitution imposes on all elected and appointed officers. The oath of office for such officers provides, as follows:

> I, _____, do swear, (or affirm, as the case may be), that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of _____, according to the Constitution and Laws of this State (and, if a Governor, Senator, Member of the House of Delegates or Judge), that I will not directly or indirectly, receive the profits or any part of the profits of any other office during the term of my acting as _____.

Art. I, Sec. 6. Moreover, Sec. 7 of Art. I makes it a constitutional crime to violate this oath and provides that, in addition to the penalty provided by law, the convicted officer is disqualified from holding office. Furthermore, with respect to certain members of the Executive and Legislative Branches, the Constitution also imposes a general trusteeship duty. Art. 6 of the Declaration of Rights provides, in part,[1]

> That all persons invested with the Legislative or Executive powers of Government are Trustees of the Public, and, as such, accountable for their conduct.

In Kerpelman v. Board of Public Works, 261 Md. 436, 445 (1970), the Court of Appeals noted that this section "sets forth the well-established doctrine that the duties of public officials are fiduciary in character and are to be exercised as a public trust." In addition to these general constitutional obligations, there is also a common law duty for the faithful performance of

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[1] While Art. 6 of the Declaration of Rights does not apply to the Judiciary, there are various references to the expected "uprightness," Declaration of Rights, Art. 33, and "integrity," Art. IV, Sec. 2, of judges. Moreover, there is a specific ban on judges sitting in cases in which they have a personal interest. Art. IV, Sec. 7.

office. As the Court of Appeals said in Montgomery County Board of Appeals v. Walker, 228 Md. 574, 580 (1974),

> [w]hen one accepts a public office, he assumes the responsibility of performing the duties imposed with complete fidelity, and public policy requires that personal or pecuniary interests that would constitute a possible factor of influence in regard to his official actions should be nonexistent.

It is against this constitutional and common law background that we address the question of the authority of the General Assembly to enact legislation prescribing particular standards of conduct not only for officers but for employees as well in order to insure the faithful performance of their duties.[2]

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[2] We understand that, in asking about the authority of the General Assembly to enact a statute "prescribing standards of conduct which forbid conflicts of interest," you are referring to the sort of standards presently set out in the Executive Code of Ethics. Code of Maryland Regulations (COMAR), Executive Order 01.01.1969.07, as amended by Executive Orders 01.01.1970.14 and 01.01.1978.09, (hereinafter cited as Executive Code of Ethics). The last revision is published in 5 Maryland Register 1199 (July 28, 1978). The Code, without the latest amendment, is also published in the Annotated Code of Maryland, vol. 9A at 569. This Code, which was first promulgated in 1969 pursuant to statutory enactment, Annotated Code of Maryland, Art. 41, §14A, prescribes various standards of ethical conduct severely limiting the acceptance of gifts and generally forbidding the solicitation of gifts, the disclosure of confidential information for private gain, outside employment which results in a conflict of interest, the use of the prestige of State office or employment for private gain, representational activities against the State, participation in transactions involving a private interest of the officer or employee, and certain financial holdings by regulatory personnel. Executive Code of Ethics, Art. III. Our reference here to the Executive Code of Ethics is simply for definitional purposes. This code is not, of course, the only code of ethics for State officials and employees. The Court of Appeals has promulgated a set of ethical standards for the Judiciary, Maryland Rules, Rule 1231, as amended, 4 Maryland Register 2004 (Dec. 16, 1977) and 2090 (Dec. 30, 1977), and the two Houses of the General Assembly pursuant to Annotated Code of Maryland, Art. 40, §90, have promulgated a set of standards in their rules, Rules of the Senate of Maryland, 1978 Regular Session, Rule 104 and Rules of the House of Delegates of Maryland, 1978 Regular Session, Rule 104. A set of ethical

In deciding whether the General Assembly may enact a statute setting such standards of conduct, it is necessary to determine both the authority of the General Assembly to legislate and the limitations on this authority. The Maryland Constitution does not explicitly vest authority to legislate in the General Assembly.3/ Rather its authority is inherent in that legislative body which the Constitution establishes. Indeed, it has been held that the State Constitution is not a grant of express powers to the General Assembly, but a statement of limitations on its otherwise plenary powers. Richards Furniture Corp. v. Board of County Commissioners, 233 Md. 249, 257 (1963), Maryland Committee v. Tawes, 228 Md. 412, 439 (1962), Leonard v. Earle, 155 Md. 252, 260 (1928). A full statement of this view is found in the Leonard case, supra, in which the Court of Appeals said,

> The powers of the Legislature are not derived from grants in the Constitution of the State, or, indeed, from any classifications made use of in discussions of exercises of power; plenary power in the Legislature for all purposes of civil government is the rule, a prohibition to exercise a particular power is an exception, and can be founded only on some constitutional clause plainly giving rise to it. [4/]

(footnote 2 continued)

standards was, of course, also the subject of S.B. 944 and S.B. 950 of the 1978 Session, neither of which passed. We are here only concerned with the matter of setting standards of conduct and not the matter of financial disclosure. Revision of financial disclosure requirements was also proposed in two 1978 bills. Members of the General Assembly, certain officials in the Executive Branch, and certain local officials are already subject to financial disclosure requirements by statute, Annotated Code of Maryland, Art. 33, §§ 29-1 through 29-12, and judges are subject to these requirements by judicial rule, Maryland Rules, Rule 1231.

3 Art. III, Sec. 1 of the Maryland Constitution simply provides, "The Legislature shall consist of two distinct branches; a Senate and a House of Delegates, and shall be styled the General Assembly of Maryland."

4 Leonard, supra, at 260. Because of its very nature, the plenary power of the General Assembly can only be defined with reference to its limitations. However, cases concerning the police power do illuminate the broad nature of the power of the General Assembly. The police power is an inherent power of government which is exercised by the Legislature. Smith v. Higinbotham, 187 Md. 115, 128 (1946). It has traditionally been defined as the power, subject to constitutional limitations, to prescribe reasonable regulations necessary to preserve the public order, safety or morals. Tighe v. Osborne, 149 Md. 349, 356 (1925). However, more recent decisions have spoken of the authority to prescribe such regulations for the general welfare, see e.g.

As we have previously observed:

> A qualification of this general rule of plenary legislative authority surfaced in the mid-nineteenth century, when several state courts, including the Court of Appeals, express the view that, independent of the Constitution, state legislatures are subject to general principles of right and justice fixed by the natural law. Hurst, The Growth of American Law - The Law Makers, Little, Brown & Co. (1950), p. 31; see, Regents v. Williams, supra, 9 G. & J. at 408.
>
> Although this principle was criticized [5/] and was never applied to strike down an Act of the General Assembly, it appears to have become the cornerstone of an oft asserted and sometimes recognized qualification of the general rule that the plenary legislative authority of the General Assembly is restricted only by constitutional inhibitions. See, Talbot Co. v. Queen Anne's County, 50 Md. 249, 259 (1879); Cohen v. Jarrett, 42 Md. 571, 575 (1875); Hagerstown v. Sehner, 37 Md. 191 (1872); Harrison v. State, 22 Md. 468, 494 (1864); and Baltimore v. State, 15 Md. 376, 469 (1860). Indeed, in dicta enunciated as late as 1946 but never thereafter

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(footnote 4 continued)

Maryland Coal and Realty Co. v. Bureau of Mines, 193 Md. 627, 636 (1949). Moreover, in Allied American Mutual Fire Insurance Co. v. Commissioner of Motor Vehicles, 219 Md. 607, 616 (1959), the police power was expansively referred to as the "power to govern" and was defined, in Stevens v. City of Salisbury, 240 Md. 556, 564 (1964), as follows:

> It has long been recognized in this State, as established by a long line of decisions of this Court, that the Legislature has an inherent right to prescribe, within constitutional limitations, reasonable regulations, which are necessary to protect the public health, comfort, order, safety, convenience, morals and general welfare.

While this already broad power has been defined even more broadly in more recent decisions, a consistent theme of all the cases is that the exercise of this power must be reasonable.

[5] See, 21-22 Decisions of the Court of Appeals of Md. (G. & J. 8-9, Brantly's Notes) 234, Annot. (e). See also, Hurst, supra; Cooley's Const. Lim., supra, ch. VII.

relied upon, the Court of Appeals expressed the view that statutes enacted under the police power "are subject to the same limitations as are laws dealing with the right of life, liberty and property * * * [and thus the Legislature's] action is always subject to [an extra-constitutional] test of reasonableness."[6/] Smith v. Higinbotham, 187 Md. 115, 128 (1946).

Whatever the previous validity of this "independent" principle of right and justice (and its apparent offspring, the "reasonableness" test), in the light of the subsequent evolution of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and the corresponding development of Article 23 of the Maryland Declaration of Rights, the restraints arguably imposed by this fundamental principle are now clearly within the inhibitions of both the federal and State constitutions,[7/] and thus no longer constitute either an extra constitutional restraint on the authority of the General Assembly or a qualification of the

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6 "The power of the Legislature to enact corrupt practices legislation is very broad. * * * [L]aws of this kind lie within the domain of the police power and are subject to the same limitations as are laws dealing with the right of life, liberty and property. The right of the Legislature to exercise the police power is not referable to any single provision of the Constitution. It inheres in and springs from the nature of our institutions, and so the limitations upon it are those which spring from the same source as well as those expressly set out in the Constitution. The Legislature at all times exercises a delegated power, and its action is always subject to the test of reasonableness. The sovereign power remains in the people. A full exercise of the right of citizenship includes, not only the right to vote, but the right to assembly, the right of free speech, the right to present one's views to one's own fellow citizens, and the right to submit one's claims to leadership to the people. These rights are of the very essence of democracy. State ex rel. La Follette v. Kohler, 200 Wis. 518, 228 N.W. 895, 69 A.L.R. 348."

7 See, Bruce v. Director, Chesapeake Affairs, 261 Md. 585, 595-600 (1971; Governor v. Exxon, 279 Md. 410, 423-429, 438-440 (1977); Westchester West No. 2 v. Montgomery County, 276 Md. 448, 465 n. 11 (1975); Allied American Mutual Fire Insurance Co. v. Commissioner of Motor Vehicles, 219 Md. 607, 623 (1959); Daniel Loughran Co. v. Lord Baltimore Candy and Tobacco Co., 178 Md. 38, 48 (1940).

> general rule of plenary State legislative authority.
>
> Consequently, it is now well settled that, unlike its federal counterpart, which has only such authority as the federal constitution expressly or by necessary implication confers upon it, Afroyim v. Rusk, 387 U.S. 253, 257 (1967), the General Assembly of Maryland, like virtually all of its sister state legislatures, inherently "possesses all legislative power and authority except in such instance, and to such extent as the constitutions of the State and the United States have imposed limitations and restrictions thereon."

Unpublished October 25, 1977 Opinion of the Attorney General addressed to the Honorable Thomas W. Chamberlain, Jr. See also, 63 Opinions of the Attorney General ____ (May 26, 1978)(Daily Record, September 9, 1978).

In the absence, thus, of particular constitutional objections, we think that the General Assembly with its plenary legislative authority has ample power to enact ethical standards for members of the three branches in order to insure the faithful performance of their duties.8/ The question, then, is whether there are particular constitutional objections to the exercise of this plenary power. The possible objections we have found are of two types. On the one hand there is the general separation of powers provision in the Declaration of Rights. On the other, there are various specific provisions which may limit the authority of the General Assembly in enacting ethics legislation of this sort.

Article 8 of the Declaration of Rights provides:

> That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.

The purpose of this separation of powers provision has been stated as follows:

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8 See generally 62 Opinions of the Attorney General ____ (Nov. 29, 1977),(The Daily Record, Dec. 29, 1977), in which we advised that the Legislature has the power to proscribe conflicts of interest by elected officials of the Executive Branch and to prescribe ethical standards for their behavior.

> The evident purpose of the declaration last quoted, is to parcel out and separate the powers of government, and to confide particular classes of them to particular branches of the supreme authority. That is to say, such of them as are judicial in their character to the judiciary; such as are legislative to the legislature, and such as are executive in their nature to the executive. Within the particular limits assigned to each, they are supreme and uncontrollable. [9/]

Thus, the separation of powers provision means that one branch may not usurp the essential functions and powers of another branch (see Shell Oil Co. v. Supervisor of Assessments, 276 Md. 36, 46-47 (1975)), may not act to destroy the essential functions and powers of another branch (see Criminal Justice Compensation Board v. Gould), 273 Md. 486, 500-501 (1975)), and may not delegate its essential functions and powers to another branch (see Ahlgren v. Cromwell, 179 Md. 243, 246-247 (1941)). As Mr. Justice Holmes has pointed out and we have recently observed, the authority of each branch is absolute only within the powers which the Constitution assigns it. Beyond this core area there is a twilight in which the branches may have concurrent authority and, e.g., the legislative branch may act "to the extent that it has legislative authority and does not encounter an express constitutional limitation or intrude upon the core powers held by another branch." Springer v. Philippine Islands, 277 U.S. 189, 209-211 (1928). See also, 63 Opinions of the Attorney General, supra.

While the separation of powers provision is intended to prevent the usurpation, destruction and delegation of essential powers, it is not intended to prevent one branch from exercising its own powers simply because they affect or even nullify the acts of another branch. Judicial review is an obvious example. The courts do not violate the separation of powers provision when they

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9 Wright v. Wright's Lessee, 2 Md. 429, 452 (1852), quoted with approval in McCrea v. Roberts, 89 Md. 238, 251 (1899). The reference in Wright is to the separation of powers provision in Art. 6 of the Declaration of Rights of the Constitution of 1776 which provided, as follows:

> That the legislative, executive and judicial powers of government, ought to be forever separate and distinct.

The additional proviso of the separation of powers provision in the present Constitution first appeared in Art. 6 of the Declaration of Rights of the Constitution of 1851 and was repeated in Article 8 of the Declaration of Rights of the Constitution of 1864.

invalidate the acts of the other branches, so long as the courts are exercising their own judicial power and do not act to destroy the essential power of the other branches. We do not think that this provision bars the General Assembly from prescribing ethical standards for members of the three branches in order to insure the faithful performance of their respective duties. In our view, the setting of such standards by statute would neither usurp nor destroy the essential powers of the other branches; rather, it would merely insure the integrity of the manner in which the duties otherwise imposed upon these officials and employees are performed. We think that this view finds support in the Constitution itself. Art. III, Sec. 56 provides that the General Assembly has the power to pass laws necessary and proper for "carrying into execution the powers vested, by this Constitution, in any Department, or office of the Government, and the duties imposed upon them thereby." Sec. 50 of the same article directs the General Assembly to enact legislation providing a penalty in bribery cases involving members of the Legislative, Executive or Judicial Branches. Both of these passages clearly contemplate the enactment of legislation concerning the manner in which members of all three branches exercise their powers and carry out their duties. Sec. 50 is particularly significant. This section does not confer power on the General Assembly to enact bribery legislation for all three branches. It merely directs the Legislature to enact a penalty for what was, at the time of the adoption of this provision, the common law offense of bribery. Blondes v. State, 16 Md. App. 165, 182 (1972). Under the Constitution, the Legislature may, of course, modify the common law, Decl. of Rts., Art. 5. There is no indication that in exercising its plenary power to enact such bribery legislation, Ann. Code of Md., Art. 27, §27, the Legislature has in any way offended or acted in a way inconsistent with the separation of powers provision. Certainly, if the General Assembly has plenary power to enact bribery legislation for all three branches without offending the separation of powers provision, there can be no separation of powers objection to the General Assembly's exercise of its plenary power to prescribe standards of ethical conduct for all public officers and employees in order to insure that they will observe their general constitutional obligation of faithfully performing their duties.[10]

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[10] We have not found cases from other jurisdictions of any assistance in resolving the separation of powers issue. Indeed, we have found only two proceedings in which the matter was even raised. In In Re The Florida Bar, 316 S.2d 45 (1975) the Florida Supreme Court concluded in an advisory opinion that the Legislature has no power to require judicial officers, including lawyers, to submit financial disclosure statements. The Court found that lawyers are judicial officers and simply concluded that the Courts have inherent and exclusive authority to regulate the Bar. Id. at 48. However, in its opinion the Court relied

Apart from the question of whether the separation of powers provision bars the General Assembly from enacting ethical standards for members of the three branches, there is the further question of whether there are specific provisions of the Constitution which reserve the power to prescribe such standards exclusively to the particular branches and thus limit the Legislature's general authority to enact such standards. With respect to the Legislature itself, Art. III, Sec. 19, provides, in part, that each House shall determine the rules of its own proceedings. We think that this provision plainly refers merely to rules concerning the procedures by which the Houses conduct their own business. Even if this power were exclusively the power of each House individually,11/ we do not

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(footnote 10 continued)

heavily on specific constitutional provisions explicitly giving the Supreme Court exclusive jurisdiction to regulate the practice of law, id. at 49, and directing the Legislature to enact a code of ethics for all state employees and non-judicial officers. Id. at 47. In Stein v. Howlett, 289 N.E.2d 409 (Ill. 1972), that State's Government Ethics Act, requiring financial disclosure by various public officials, was attacked on separation of powers grounds. Id. at 411. However, the Court did not specifically address this issue but simply noted that the Legislature had constitutionally provided and inherent power to enact such legislation. Id. at 415. The same point was made by the Louisiana Supreme Court in a case concerning that State's Code of Ethics. Womack v. Louisiana Commission on Governmental Ethics, 199 So.2d 891, 898 (1967). See also Kane v. Louisiana Commission on Governmental Ethics, 199 So.2d 900,903 (1967). In the Illinois case, the statute was also attacked on the grounds that it violated the constitutional Right of Privacy. Stein at 413. This contention, as well as allegations of vagueness, or both, have been common grounds for constitutional attacks on ethics statutes. Right of Privacy: see e.g. City of Carmel-By-The-Sea v. Young, 400 P.2d 225 (Calif. 1970)(financial disclosure) and Goldtrap v. Askew, 334 So.2d 20 (Fla. 1976)(financial disclosure); Vagueness: see e.g. Yetman v. Naumann, 492 P.2d 1252 (Ariz.App. 1972)(conflict of interest), D'Alemberti v. Anderson, 349 So.2d 164(Fla. 1977)(conflicts of interest), and State v. Dinsmore, 308 So.2d 32 (Fla. 1975)(financial disclosure and conflicts of interest); or both: see e.g. County of Nevada v. McMillen, 522 P.2d 1345 (Calif. 1974)(financial disclosure and conflicts of interest) and Montgomery County v. Walsh, 274 Md. 502 (1975)(financial disclosure). These attacks succeeded, at least in part, in the Young, Dinsmore and Anderson cases but not because of defects inherent in the nature of the statute. They did not succeed in the other cases, including Walsh.

11/ The two Houses of the General Assembly themselves evidently do not regard the matter of prescribing the rules for their proceedings as exclusively the prerogative of the respective Houses inasmuch as they have enacted several statutes concerning their proceedings, see, e.g., Ann. Code of Md., Art. 40, §§72-87 (investigating committees).

think that it precludes enactment of legislation by the entire Legislature prescribing standards for the conduct of individual members.12/ With respect to the Executive Branch, we have found no specific constitutional provision reserving the setting of ethical standards for members of that branch to the Governor.13/ With respect to the Judiciary, Art. IV, Sec. 18A of the Constitution confers on the courts broad rule-making power,14/ which evidently includes the authority to prescribe ethical standards for members of the Judiciary. However, by the very terms of this provision, this broad rule-making power is not reserved exclusively to the courts. Such rules may be changed "by law," that is, by the Legislature. Funger v. Mayor and Council of Somerset, 244 Md. 141, 150 (1966).

We conclude that neither the separation of powers provision nor any other specific provision bearing on the powers of the respective branches of government precludes the General Assembly from exercising its plenary legislative authority to enact ethical standards for members of the three branches.15/

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12 While not actually enacting a statute setting ethical standards, the General Assembly has already enacted a statute establishing a single ethics committee for the two Houses and directing it to promulgate ethical rules for adoption by joint resolution. (See fn. 2 for citation to these rules).

13 The General Assembly has, of course, already enacted a general prohibition on conflicts of interest applicable to the Executive Branch, Annotated Code of Maryland, Art. 19A, §§1-7, and has, as noted, directed the Governor to promulgate a code of ethics for the Executive Branch. (See fn. 2 for citation to this code).

14 Art. IV, Sec. 18A of the State Constitution provides, in part, as follows:

> The Court of Appeals from time to time shall make rules and regulations to revise the practice and procedure in and the administration of the appellate courts and in the other courts of this State, which shall have the force of law until rescinded, changed or modified by the Court of Appeals or otherwise by law. The power of courts other than the Court of Appeals to make rules of practice and procedure, or administrative rules, shall be subject to the rules and regulations prescribed by the Court of Appeals or otherwise by law.

15 Our analysis has been confined to considering questions arising under the Maryland Constitution, as we think that the mere enactment of such ethical standards does not raise any significant question under the federal Constitution.

II.

Establishing the Board

In the absence of an objection on the grounds of the general separation of powers provision or some more concrete provision of the Constitution, we think that the General Assembly, exercising its broad and inherent plenary legislative power, may establish a board to investigate and determine violations of legislatively prescribed ethical standards for members of all three branches. The most fundamental constitutional objection to the creation of a board with power to determine violations of a statute is that in establishing such a board and vesting such authority in it the Legislature would violate the separation of powers provision by usurping the essential power of the courts, i.e., the judicial power. Under the Constitution, the judicial power is vested in the Court of Appeals, such intermediate appellate courts as the General Assembly establishes, and various other courts.16/ This power is vested only in the courts established by the Constitution or authorized by it, and the Legislature may not vest it elsewhere. Mayor and Council of Hagerstown v. Dechert, 32 Md. 369, 383 (1870).

While the General Assembly may not usurp the judicial power of the courts by vesting it elsewhere, it has been held that the General Assembly may establish a body to make factual determinations and to apply the law to particular matters without usurping the judicial power. Solvuca v. Ryan and Reilly Co., 131 Md. 265, 284 (1917). The power to make such determinations is now denominated as "quasi-judicial" in nature. County Council v. Investors Funding Corp., 270 Md. 403, 432 (1973). While "quasi-judicial power" and "judicial power" share the adjudicatory function, not all adjudication is judicial. Attorney General v. Johnson, 282 Md. 274, 284 (1978). See also Shell Oil Co. v. Supervisor, 276 Md. 36, 46 (1975). It is the exercise by a body other than a court of the judicial power, not merely an adjudicatory function, which violates the separation of powers principle. Johnson at 284. In this regard, it has consistently been held that "quasi-judicial" power is to be distinguished from judicial power, in that the findings resulting from an exercise of quasi-judicial

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16 Art. IV, Sec. 1 provides, as follows:

> The Judicial power of this State shall be vested in a Court of Appeals, and such intermediate courts of appeal, as shall be provided by law by the General Assembly, Circuit Courts, Orphans' Courts, such courts for the city of Baltimore, as are hereinafter provided for, and a District Court; all said Courts shall be Courts of Record, and each shall have a seal to be used in the authentication of all process issuing therefrom.

power are not final but are subject to judicial review by the courts, Heaps v. Cobb, 185 Md. 372, 379 (1945); Heath v. Mayor and City Council, 187 Md. 296, 304-305 (1946); Burke v. Fidelity Trust Co., 202 Md. 178, 189 (1953); and Department of Natural Resources v. Linchester Sand and Gravel Corp., 274 Md. 211, 223 (1975); and that the resulting orders may not be enforced by the body which entered them, Dal Maso v. County Commissioners, 182 Md. 200, 205 (1943). Thus, in the recent case of Attorney General v. Johnson, 282 Md. 274, 296 (1978), it was said, "... we agree with those courts which have said that the essence of judicial power is the final authority to render and enforce a judgment."[17] Accordingly, we conclude that the establishment by the Legislature of a body to determine violations of a conflicts of interest statute would not, despite its adjudicatory function, usurp the judicial power of the courts so long as the findings and orders of such a body were subject to judicial review and enforcement by the courts.

In addition to the question of whether the establishment of such a body might be a usurpation of the judicial power in violation of the separation of powers provision, there is the separate but related question of whether such a body might be destructive of the essential powers of the particular branches in violation of the separation of powers provision. It is possible, of course, that a body, appointed under the authority of a single branch and endowed with sweeping investigative and punitive powers might be so destructive. However, we think that a body, even one appointed entirely by the Governor, whose powers and procedures are carefully defined to permit only investigations and determinations of particular violations by particular individuals would not be destructive of the essential powers of the other branches.[18] I respectfully disagree

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[17] In Reyes v. Prince George's County, 281 Md. 279, 296 (1978), the Court of Appeals, citing County Council v. Investors Funding Corp., supra at 436, listed the following among the indicia of judicial power: (1) the power to make final rather than one initial determination, (2) the power to make binding judgments, (3) the power to affect the personal or property rights of private persons, (4) the exercise of power formerly held by a court, and (5) the fashioning of remedies which are judicial in nature. However, in Investors Funding itself the significance of the third, fourth and fifth factors was discounted in defining judicial power. Id. at 437-443.

[18] Quite aside from separation of powers considerations, it should also be noted that as a matter of federal and State constitutional law, a body empowered to determine violations of ethical standards and to impose sanctions against the violators would, as a matter of Due Process, be required to give such persons the benefit of a notice and hearing on the charges. U.S. Const., 14th Amend. and Md. Const., Decl. of Rts., Art. 23.

With respect to the establishment of a body to investigate and determine violations of ethical standards for members of the three branches, there remains the question of whether the State Constitution specifically reserves this to a particular branch or limits the powers such a body might exercise. With respect to the General Assembly itself, Art. III, Sec. 19 of the Constitution provides, in part, that "[e]ach House shall be judge of the qualifications and elections of its members, as prescribed by the Constitution and Laws of the State." Construing this section, the Court of Appeals has held:

> The Senate of Maryland itself, under section 19, Article 3, of the Constitution, is the tribunal which has the sole power to decide and judge of the qualifications of its members, to the exclusion of every other tribunal. It is made the final and exclusive judge of all questions whether of law or of fact respecting such election returns or qualifications, so far as they are involved in the determinations of the right of any person to be a member thereof. We express no opinion, and disclaim all intention to investigate the question of the title to the office of senator in this case.

Price v. Ashburn, 122 Md. 514, 525 (1913). See also Covington v. Buffett, 90 Md. 569, 577-578 (1900); and Bowling v. Weakley, 181 Md. 496, 500-501 (1943). This section simply makes each House the sole judge of the right of persons to hold office as members of that House. It does not, in our view, preclude the General Assembly from establishing a body to be appointed by the Governor to determine whether public officers, including members of the Legislature, have violated an ethics statute so long as the body does not pass on the right of the members to hold office.

However, we do think that the Speech and Debate clauses of the State Constitution[19/] would limit the power of such a body to investigate and pass upon the conduct of members of the General Assembly. While these clauses explicitly bar only judicial inquiry into the speech and debate of legislators, they

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[19]Art. 10 of the Declaration of Rights provides, as follows:

> That freedom of speech and debate, or proceedings in the Legislature, ought not to be impeached in any Court of Judicature.

Article III, Sec. 18 of the Constitution provides, as follows:

> No Senator or Delegate shall be liable in any civil action, or criminal prosecution, whatever, for words spoken in debate.

have been held to be in pari materia with the equivalent clause of the Federal Constitution, Blondes v. State, 16 Md. App. 165, 175 (1972); which provides, "... and for any Speech or Debate in either House, they shall not be questioned in any other Place." Art. I, Sec. 6, Cl. 1. These clauses serve to "protect the integrity of legislative process by insuring the independence of individual legislators and to reinforce the separation of powers embodied in our tripartite form of government." Blondes at 175. Broadly speaking, the clauses in the Maryland Constitution bar outside inquiries into the legislative acts of Members of the General Assembly and the motivation for those acts, Blondes at 176-177, 179 and 183, and they are to be understood in the historical context of the struggle for Parliamentary supremacy.[20]

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[20] Blondes at 174. The struggle for Parliamentary supremacy resulted in the following general legislative immunity provision in the English Bill of Rights, "that Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament." 1 W. & M., Sess. 2, c. 2. That clause was the basis for the Speech or Debate Clause in the Federal Constitution, United States v. Johnson, 383 U.S. 169, 177-178 (1966), interpretations of which are regarded as authoritative in construing the equivalent Maryland clauses, Blondes at 179. In Johnson, the Supreme Court held that the Speech or Debate Clause of the Federal Constitution bars the prosecution of a Member under a criminal statute of general application on the basis of his legislative acts or the motivation for them. Johnson at 185. While finding that the purpose of the clause is primarily to prevent intimidation by the executive and accountability before the judiciary, particularly through a criminal prosecution, the Court noted that the clause is framed in the broadest possible terms. Id. at 181-183. It has consistently been held that the clause is to be read broadly to effectuate its purposes, Eastland v. United States Servicemen's Fund, 421 U.S. 491, 501 (1975), and this purpose is "to insure that the legislative function the Constitution allocates to Congress may be performed independently." Id. at 502. However, the clause does not prevent inquiry into all conduct which relates to the legislative process, but only protects against "inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." United States v. Brewster, 408 U.S. 501, 515 and 525 (1972). To enjoy the protection of this clause, such acts "must be an integral part of the deliberative and communicative process by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House." Gravel v. United States, 408 U.S. 606, 625 (1972). Thus, not only words spoken in debate, but

While these clauses would be a general limitation on the power of a gubernatorially-appointed body to investigate and determine violations of a conflicts of interest law with respect to legislators, the precise limits on this power would depend on the nature of the particular inquiry and of the particular alleged violation.

With respect to the Executive and Judicial Branches, we have found no specific provisions which expressly reserve to these two branches sole authority to determine violations of statutory ethical standards by their respective members.21/ However, Art. IV, Sec. 4A of the Constitution does create the Commission

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(footnote 20 continued)

also committee reports, resolutions, voting, and things done during a session on the floor which relate to the business of the body are protected by this clause. Powell v. McCormack, 395 U.S. 486, 502 (1969). Moreover, conduct in the course of committee proceedings as well as in the course of floor proceedings are within the protected sphere of legitimate legislative activity. Gravel at 624. Where conduct can be properly characterized as within the sphere of legislative activity, inquiry outside the particular legislative body is precluded. Gravel at 615, Doe v. McMillan,, 412 U.S. 306, 324 (1973), and Eastland v. United States Servicemen's Fund, 421 U.S. 491, 501 (1975). "[O]nce it is determined that Members are acting within the "legitimate legislative sphere" the Speech or Debate Clause is an absolute bar to interference." Eastland at 503, citing McMillan at 314. However, it is clear that acts not protected could well be the proper subject of inquiry into various alleged violations of typical kinds of ethical limitations and prohibitions.

21 It might be argued that passing upon the conduct of members of the Executive and Judicial Branches is a matter for the Legislature itself in exercising its impeachment powers. The general impeachment provision is found in Art. III, Sec. 26. It states:

> The House of Delegates shall have the sole power of impeachment in all cases; but a majority of all the members elected must concur in the impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose, the Senators shall be on oath, or affirmation, to do justice according to the law and evidence; but no person shall be convicted without the concurrence of two-thirds of all the Senators elected.

As this provision neither specifies the officers who are subject to it, prescribes the grounds for impeachment, nor sets the penalty for conviction, we conclude that such a vague provision cannot reasonably be construed as reserving to the Legislature itself the sole power to pass judgment on the conduct of members of the Executive and Judicial Branches.

on Judicial Disabilities, and Sec. 4B of this article authorizes the Commission to investigate and hear complaints against judges, to issue reprimands, and to recommend other action to the Court of Appeals. While these sections do not specifically reserve to the Commission exclusive authority to determine ethical violations by judges, the provision of such a comprehensive, integrated scheme for this purpose is indicative of such an intent,[22] and, in the absence of either case law or a legislative history to

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[22] We have found nothing in the rather sparse legislative history of this provision which definitively reveals the Legislature's intent in this matter. The provision, which originally dealt only with the removal and retirement of judges by the Legislature on the recommendation of the Commission, became part of the Constitution in 1966, Ch. 773, Laws of Maryland, 1965, ratified Nov. 8, 1966, and was the result of a recommendation of the Legislative Council. In its report to the 1965 Session, the Council gave this explanation of the bill:

> This bill is recommended at the request of the Committee on Judicial Ethics of the State Bar Association. The Committee after study of the question of removal of judges in Maryland reached the conclusion that there is a need for a legally constituted body with the power to investigate and take or initiate action to remove or retire a judge for cause. Therefore, the Council submits first a constitutional amendment creating a Commission on Judicial Disabilities which is empowered to hold a hearing on charges against any judge and to make a recommendation to the Court of Appeals for removal or retirement. After review and receipt of further evidence, the Court may order the removal or the retirement of the judge. This is the method utilized by the State of California and the Council believes it is needed in Maryland. At the present time judges may be removed by the Governor after a conviction, or after impeachment, or on a legislative address, or they may be retired by act of the General Assembly. The method submitted is a workable and desirable procedure.

Legislative Council of Maryland, Report To The General Assembly of 1965 147. This provision was amended in 1970, Ch. 789, Laws of Maryland, 1969, ratified Nov. 3, 1970, to shift the removal and retirement authority from the General Assembly to the Court of Appeals and to permit the censuring of judges by the Court, and in 1974, Ch. 886, Laws of Maryland, 1974, ratified Nov. 5, 1974, to permit the Commission to reprimand a judge or to recommend censure or other discipline and to permit the Court to discipline judges. A technical amendment, removing obsolete transitional provisions relating to the terms of the original members of the Commission was proposed by Ch. 681, Laws of Maryland, 1977 and is to be voted upon at the General Election of Nov. 7, 1978.

guide us, we construe them to reflect that intention. Moreover, even if the Commission does not, as a matter of constitutional law, have exclusive jurisdiction over these matters, we think that the creation of another body with similar authority could create much confusion.

III.

Prescribing the Penalties

While the General Assembly may establish a body to determine violations of an ethics statute, there are substantial limitations on the penalties which such a body might be authorized to impose. It is well settled that the General Assembly has the power to define what acts constitute crimes and what penalties may be imposed upon the offenders. Greenwald v. State, 221 Md. 235, 240 (1959). The Legislature may, then, declare all or specified violations of the ethical standards to be criminal offenses punishable by a fine and imprisonment. However, the adjudication of violations of the statute as criminal offenses is quite clearly an exercise of judicial power. County Council v. Investors Funding Corp., 270 Md. 403, 440, fn. 13 (1973). As previously noted, the Legislature may not usurp this power by vesting it outside the courts. However, the Legislature would not usurp the judicial power by authorizing such a body to award damages, to enter cease and desist orders, and to levy civil penalties so long as there are sufficient legislative guidelines for the exercise of this authority as an incident of the body's regulatory powers. Id. at 440-443.[23] As indicated, however, the findings and resulting orders of such a body cannot be regarded as final or binding. They must be subject to judicial review and enforcement.

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[23] There are already instances in State law where such authority has been conferred. The Consumer Protection Division of this office has, for example, been given the authority to levy civil penalties and to enter cease and desist orders, Ann. Code of Md., Commercial Law Article, §§ 13-410 and 13-403, respectively, and the Commission on Human Relations has been given the authority to award money damages in certain discrimination cases, Ann. Code of Md., Art. 49B, Sec. 14. See generally Gutwein v. Easton Publishing Co., 272 Md. 563, 568-577 on the requirement that the authority of an administrative agency to award damages must be explicitly provided for by statute. The Human Relations statute, Ann. Code of Md., Art. 49B, is also of interest as an instance in which the General Assembly has prohibited certain conduct, in this case certain discriminatory acts, has applied these prohibitions to agencies, officers and employees of the State, Sec. 11B, and has provided for an examiner to determine violations, Sec. 14, although there may not be an award of damages in a case against an agency, officer or employee of the State, Sec. 11B.

MD J.S. 1.2:J58/983

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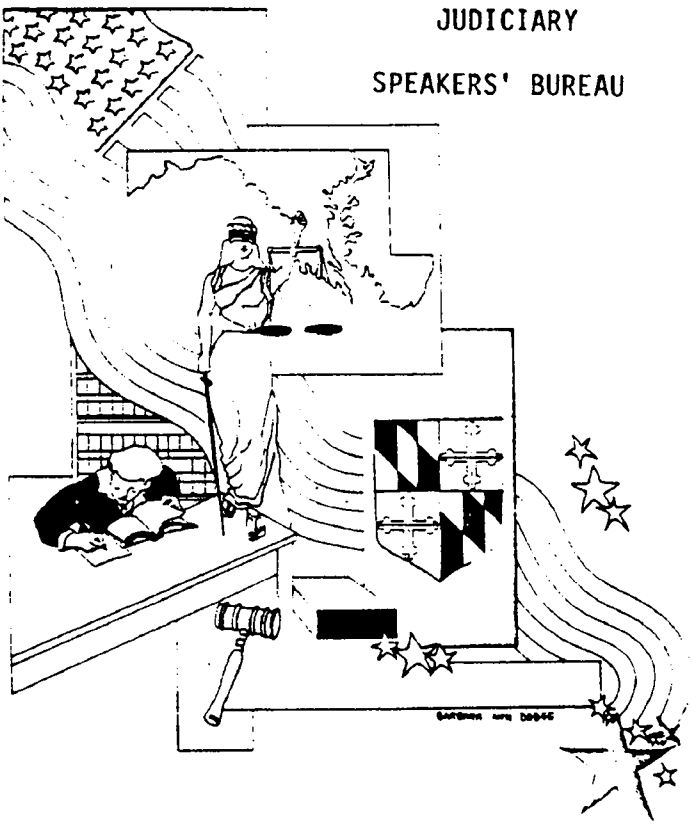

MAY 1983

STATE OF MARYLAND

JUDICIARY

SPEAKERS' BUREAU

MAY 1983

Prepared by
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MARYLAND JUDICIAL CONFERENCE
269-2141

Executive Secretary
James H. Norris, Jr.

Courts of Appeal Building
Annapolis, Maryland 21401

MEMORANDUM

TO: High School Social Studies Supervisors,
Maryland Public Schools
Principals, Private Schools
League of Women Voters
YMCA and YWCA of Maryland
Rotary International
Maryland Jaycee Chapters
Other Special Interest Groups

FROM: Solomon Liss, Associate Judge, Court of Special Appeals
Chairman, The Public Awareness Committee
of the Maryland Judicial Conference

SUBJECT: Speakers' Bureau

DATE: May 2, 1983

The Public Awareness Committee of the Maryland Judicial Conference has established a speakers' bureau of Maryland judges with representatives from the Court of Appeals, the Court of Special Appeals, circuit courts, and the District Court of Maryland. The speakers' bureau has been created to inform the citizenry of Maryland about court operations and is being distributed to schools and organizations. Within this booklet is the speakers' bureau list. Many judges have listed particular subjects they would like to address in addition to the courts in general.

If you are interested in inviting a judge to speak to your class or group, please contact the Chief Judge or Administrative Judge for that particular court first to ensure that there is not a court schedule conflict. If there are no conflicts, then contact the particular judge that you would like to address your group. All addresses and telephone numbers are on the list. Further information regarding the speakers' bureau can be obtained from Deborah A. Unitus, staff to the Public Awareness Committee, at the Administrative Office of the Courts in Annapolis at 301/269-2141.

TTY for Deaf:
Annapolis Area P269-2909
Washington Area P261-2658

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Anne Arundel	Hon. Raymond G. Thieme, Jr. Circuit Administrative Judge Courthouse Annapolis, Maryland 21401 301/224-7665
	Hon. Thomas J. Curley District Administrative Judge District Court Building Post Office Box 843 Annapolis, Maryland 21404 301/269-2734
Baltimore City (Court of Special Appeals)	Hon. Richard P. Gilbert Chief Judge Court of Special Appeals Courts of Appeal Building 361 Rowe Boulevard Annapolis, Maryland 21401 301/269-2297
Baltimore City	Hon. Robert L. Karwacki Circuit Administrative Judge 466 Courthouse West 100 North Calvert Street Baltimore, Maryland 21202 301/396-5060

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Hon. Raymond G. Thieme, Jr. Circuit Administrative Judge Circuit Court for Anne Arundel County Courthouse Annapolis, Maryland 21401 301/224-7665	General
Hon. James C. Cawood, Jr. Circuit Court for Anne Arundel County Courthouse Annapolis, Maryland 21401 301/224-1449	General
Hon. James L. Wray Circuit Court for Anne Arundel County Courthouse Annapolis, Maryland 21401 301/224-1456	General
Hon. George M. Taylor District Court Number Seven District Court Building 7500 Ritchie Highway Glen Burnie, Maryland 21061 301/787-2033	General
Hon. Solomon Liss Associate Judge Court of Special Appeals 630 Courthouse East 111 North Calvert Street Baltimore, Maryland 21202 301/659-6240	General
Hon. Robert L. Karwacki Circuit Administrative Judge Circuit Court for Baltimore City 466 Courthouse West 100 North Calvert Street Baltimore, Maryland 21202 301/396-5060	Court Administration
Hon. John Carroll Byrnes Circuit Court for Baltimore City 411 Courthouse West 100 North Calvert Street Baltimore, Maryland 21202 301/396-5070	General Juvenile Crime

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SPEAKER/ADDRESS/TELEPHONE	SUBJECT
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Hon. David Ross Circuit Court for Baltimore City 561 Courthouse East 111 North Calvert Street Baltimore, Maryland 21202 301/396-5132	The Judiciary Rules of Practice and Procedure Judicial Selection Judicial Compensation
Hon. Edward J. Angeletti District Court Number One 211 East Madison Street Baltimore, Maryland 21202 301/837-4656	General
Hon. Paul E. Alpert Associate Judge Court of Special Appeals County Courts Building 401 Bosley Avenue Towson, Maryland 21204 301/494-3286	General
Hon. J. William Hinkel Circuit Court for Baltimore County County Courts Building 401 Bosley Avenue Towson, Maryland 21204 301/494-2690	General
Hon. James S. Sfekas Circuit Court for Baltimore County County Courts Building 401 Bosley Avenue Towson, Maryland 21204 301/494-2668	General
Hon. Werner G. Schoeler District Court Number Eight 111 Allegheny Avenue Towson, Maryland 21204 301/321-3356	General Alcoholism

COUNTY/COUNTIES	CHIEF JUDGE/ADMINISTRATIVE JUDGE/ADDRESS
Calvert	Hon. Robert C. Nalley District Administrative Judge Courthouse La Plata, Maryland 20646 301/645-0500
Caroline	Hon. George B. Rasin, Jr. Circuit Administrative Judge Courthouse Chestertown, Maryland 21620 301/778-4600
	Hon. Kenneth A. Wilcox District Administrative Judge 107 Railroad Avenue Elkton, Maryland 21921 301/398-4334
Carroll	Hon. Raymond G. Thieme, Jr. Circuit Administrative Judge Courthouse Annapolis, Maryland 21401 301/224-7665
Eastern Shore: Cecil, Kent, Queen Anne's, Talbot, Caroline, Dorchester, Somerset, Wicomico, and Worcester Counties (Court of Appeals)	Hon. Robert C. Murphy Chief Judge, Court of Appeals County Courts Building 401 Bosley Avenue Towson, Maryland 21204 301/494-2665
Frederick	Hon. David L. Cahoon Circuit Administrative Judge Judicial Center 50 Courthouse Square Rockville, Maryland 20850 301/251-7218
Garrett	Hon. Miller Bowen District Administrative Judge 59 Prospect Square Post Office Box 1421 Cumberland, Maryland 21502 301/777-2105

SPEAKER/ADDRESS/TELEPHONE	SUBJECT
Hon. Larry D. Lamson District Court Number Four Courthouse Post Office Box 379 Prince Frederick, Maryland 20678 301/535-1600, ext. 205/206	Driving While Intoxicated Matters
Hon. J. Owen Wise Circuit Court for Caroline County Courthouse Post Office Box 356 Denton, Maryland 21629 301/479-2303	Criminal Law and Procedure
Hon. L. Edgar Brown District Court Number Three Courthouse Denton, Maryland 21629 301/479-2410	General
Hon. Luke K. Burns, Jr. Circuit Court for Carroll County Courthouse Westminster, Maryland 21157 301/848-7500; 876-2085	General
Hon. Marvin H. Smith Associate Judge, Court of Appeals Post Office Box 309 Denton, Maryland 21629 301/479-2693	Appellate Courts
Hon. Samuel W. Barrick Circuit Court for Frederick County Courthouse Frederick, Maryland 21701 301/694-2018	General
Hon. William W. Wenner Circuit Court for Frederick County Courthouse Frederick, Maryland 21701 301/694-2018	General
Hon. Jack R. Turney District Court Number Twelve 205 South Third Street Post Office Box 9 Oakland, Maryland 21550 301/334-8164	Development and Role of the District Court

COUNTY/COUNTIES	CHIEF JUDGE/ADMINISTRATIVE JUDGE/ADDRESS
Harford	Hon. Frank E. Cicone Circuit Administrative Judge County Courts Building 401 Bosley Avenue Towson, Maryland 21204 301/494-2500
	Hon. Charles J. Kelly District Administrative Judge 220 South Main Street Post Office Box 311 Bel Air, Maryland 21014 301/838-2300
Howard	Hon. Raymond G. Thieme, Jr. Circuit Administrative Judge Courthouse Annapolis, Maryland 21401 301/224-7665
	Hon. Francis M. Arnold Oistrict Administrative Judge 55 North Court Street Post Office Box 566 Westminster, Maryland 21157 301/848-2146
Kent	Hon. George B. Rasin, Jr. Circuit Administrative Judge Courthouse Chestertown, Maryland 21620 301/778-4600/2489
	Hon. Kenneth A. Wilcox District Administrative Judge 107 Railroad Avenue Elkton, Maryland 21921 301/398-4334

SPEAKER/ADDRESS/TELEPHONE	SUBJECT
Hon. Edward D. Higinbotham Circuit Court for Harford County Courthouse Bel Air, Maryland 21014 301/879-2000	General
Hon. Cypert O. Whitfill Circuit Court for Harford County Courthouse Bel Air, Maryland 21014 301/879-2000, ext. 462	General
Hon. Edwin H.W. Harlan, Jr. District Court Number Nine 220 South Main Street Post Office Box 311 Bel Air, Maryland 21014 301/838-2300, 879-1818	Criminal Law Motor Vehicle Law
Hon. Guy J. Cicone Circuit Court for Howard County Courthouse Ellicott City, Maryland 21043 301/992-2145	What It Is Like to Be a Judge How to Become a Judge Domestic Relations Criminal Law and Procedure Crime General
Hon. R. Russell Sadler District Court Number Ten District Court/Multi-Service Center 3451 Courthouse Drive Ellicott City, Maryland 21043 301/455-8615	General
Hon. James N. Vaughan District Court Number Ten District Court/Multi-Service Center 3451 Courthouse Drive Ellicott City, Maryland 21043 301/455-8615	General
Hon. George B. Rasin, Jr. Circuit Administrative Judge Circuit Court for Kent County Courthouse Chestertown, Maryland 21620 301/778-4600/2489	General
Hon. H. Thomas Sisk District Court Number Three Courthouse Chestertown, Maryland 21620 301/778-1830	General

COUNTY/COUNTIES	CHIEF JUDGE/ADMINISTRATIVE JUDGE/ADDRESS
Montgomery	Hon. David L. Cahoon Circuit Administrative Judge Judicial Center 50 Courthouse Square Rockville, Maryland 20850 301/251-7218
	Hon. Thomas A. Lohm District Administrative Judge 15825 Shady Grove Road Post Office Box 1731 Rockville, Maryland 20850 301/977-3210
Prince George's	Hon. Ernest A. Loveless, Jr. Circuit Administrative Judge Post Office Box 459 Upper Marlboro, Maryland 20772 301/952-4093
	Hon. Graydon S. McKee, III District Administrative Judge District Court - Fifth District 14757 Main Street Upper Marlboro, Maryland 20772 301/952-4020

SPEAKER/ADDRESS/TELEPHONE	SUBJECT
Hon. Rosalyn B. Bell Circuit Court for Montgomery County Judicial Center 50 Courthouse Square Rockville, Maryland 20850 301/251-7600	Effect of Maryland ERA in the Courts What It's Like to Be a Judge How Does One Become a Judge?
Hon. Philip M. Fairbanks Circuit Court for Montgomery County Judicial Center 50 Courthouse Square Rockville, Maryland 20850 301/251-7610	General
Hon. Louis D. Harrington District Court Number Six 15825 Shady Grove Road Post Office Box 1731 Rockville, Maryland 20850 301/977-3210	General DWI Cases
Hon. Henry J. Monahan District Court Number Six 15825 Shady Grove Road Post Office Box 1731 Rockville, Maryland 20850 301/977-3210	General DWI Criminal and Civil Cases
Hon. Arthur M. Ahalt Circuit Court for Prince George's County Courthouse Post Office Box 609 Upper Marlboro, Maryland 20772 301/952-4520	General
Hon. Jacob S. Levin Circuit Court for Prince George's County Courthouse Post Office Box 399 Upper Marlboro, Maryland 20772 301/952-3830	General
Hon. Audrey E. Melbourne Circuit Court for Prince George's County Courthouse Upper Marlboro, Maryland 20772 301/952-3822	Rape and the Doctrine of Fresh Complaint
Hon. Bess B. Lavine District Court Number Five District Court - Fifth District 14757 Main Street Upper Marlboro, Maryland 20772 301/699-6779	DWI, Alcohol and Drug Cases

COUNTY/COUNTIES	CHIEF JUDGE/ADMINISTRATIVE JUDGE/ADDRESS
Prince George's, Charles, St. Mary's, and Calvert Counties (Court of Special Appeals)	Hon. Richard P. Gilbert Chief Judge Court of Special Appeals Courts of Appeal Building 361 Rowe Boulevard Annapolis, Maryland 21401 301/269-2297
Queen Anne's	Hon. George B. Rasin, Jr. Circuit Administrative Judge Courthouse Chestertown, Maryland 21620 301/778-4600
Somerset	Hon. Richard M. Pollitt Circuit Administrative Judge Post Office Box 806 Salisbury, Maryland 21801 301/742-3533
Washington	Hon. Frederick C. Wright, III Circuit Administrative Judge Courthouse Hagerstown, Maryland 21740 301/791-3112
Worcester	Hon. Richard M. Pollitt Circuit Administrative Judge Post Office Box 806 Salisbury, Maryland 21801 301/742-3533

SPEAKER/ADDRESS/TELEPHONE	SUBJECT
Hon. John J. Garrity Associate Judge Court of Special Appeals Courts of Appeal Building 361 Rowe Boulevard Annapolis, Maryland 21401 301/269-2295	Appellate Courts
Hon. Clayton C. Carter Circuit Court for Queen Anne's County Courthouse Centreville, Maryland 21617 301/758-0216	Role of the Judiciary in the Criminal Justice System Structure of the Court System in Maryland Problems Confronting the Judiciary in Maryland Today Equal Justice Under the Law
Hon. Lloyd L. Simpkins Circuit Court for Somerset County Courthouse Princess Anne, Maryland 21853 301/651-1630	Judiciary State Government American History
Hon. Frederick C. Wright, III Circuit Administrative Judge Circuit Court for Washington County Courthouse Hagerstown, Maryland 21740 301/791-3112	General
Hon. John P. Corderman Circuit Court for Washington County Courthouse Hagerstown, Maryland 21740 301/791-3116	General
Hon. Daniel W. Moylan Circuit Court for Washington County Courthouse Hagerstown, Maryland 21740 301/791-3180	Alcoholism Intervention Programs and the Courts The Criminal Justice System and Juvenile Courts
Hon. Dale R. Cathell Circuit Court for Worcester County Courthouse Snow Hill, Maryland 21863 301/632-0600	General